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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Iraq

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in Iraq prepared by Mr. Max van der Stoel, Special Rapporteur of the Commission on Human Rights, in accordance with Economic and Social Council decision 1996/277 of 23 July 1996.

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I. INTRODUCTION

1. In accordance with paragraph 11 of Commission on Human Rights resolution 1996/72 of 23 April 1996, as approved by Economic and Social Council decision 1996/277 of 23 July 1996, the present report constitutes the interim report of the Special Rapporteur on the situation of human rights in Iraq. A final report will be submitted to the Commission on Human Rights at its fifty-third session.

2. In carrying out his mandate, the Special Rapporteur has again examined a wide range of information pertaining to general and specific allegations submitted through testimony and in documentary form. However, direct access to locations within Iraq has not been possible owing to the Government of Iraq's continual refusal to cooperate with the United Nations in receiving a return visit of the Special Rapporteur to Iraq and, more importantly, the stationing of human rights monitors throughout Iraq pursuant to resolutions of the General Assembly and the Commission on Human Rights.

3. In implementation of paragraph 12 of Commission on Human Rights resolution 1995/76 of 8 March 1995, regarding the sending of human rights monitors "to such locations as would facilitate improved information flows and assessment and would help in the independent verification of reports on the situation of human rights in Iraq", and notwithstanding the Government of Iraq's refusal to cooperate with the placement of human rights monitors inside Iraq, the Special Rapporteur requested the sending of staff members of the Centre for Human Rights to Jordan. This location was chosen because of the possibility of obtaining relevant information from persons there who claim to be victims of, or eyewitnesses to, human rights violations committed by the Government of Iraq. Consequently, the present report contains, in chapter II, the results of the Special Rapporteur's investigations, considerations and conclusions based upon information received prior to and during the aforementioned mission to Jordan by human rights monitors.

4. Among the most visible and disturbing policies of the Government of Iraq, affecting virtually the entire population, are those which concern the rights to food and health. In chapter III of the present report, the Special Rapporteur addresses the situation regarding these most vital of economic rights and offers his conclusions as to the responsibilities of the Government of Iraq.

5. Chapter IV of the present report describes the results of the recent events which occurred in northern Iraq.

6. The present report reflects information at the disposal of the Special Rapporteur as of 23 September 1996.

II. VIOLATIONS OF CIVIL AND POLITICAL RIGHTS

A. Introduction

7. At the request of the Special Rapporteur, two staff members from the Centre for Human Rights travelled to Jordan from 4 to 10 April 1996, in order to interview Iraqi citizens who had recently arrived in that country. The present section describes the results of the mission based upon information received during the visit to Jordan and allegations received previously and subsequently by the Centre for Human Rights. All witnesses testified that they had fled because of the constant fear in which they lived and that the economic deterioration had increased the arbitrary interference by security and Baath Party officials in the daily lives of the citizenry. Bribery and corruption were also said to be a very common practice. There was said to be no rule of law and that the freedom of expression and thought was non-existent.

B. Personal security and due process of law

8. Arbitrary arrests were said still to be common throughout the country. Testimonies received recounted a previously well-established pattern of individual arrests without warrant or charge leading to arbitrary detention for often long periods of time without access to a lawyer or being brought before a judicial instance. Mass arrests were also reported, particularly from the southern part of the country. The arresting agents were said to vary, but were typically part of the security apparatus which is active outside normal police functions. As such, it appears clear that the security apparatus is still not subordinated to the rule of law. The evident effect of such arbitrariness continues to be the absence of assured personal security among the population.

9. Insecurity is substantially heightened by the usual treatment following arrest. Upon arrest, cruel torture and gross mistreatment still occur. Several witnesses gave testimony about terrible tortures that they suffered, sometimes over long periods of time. A number of witnesses testified that, during interrogations, they had been regularly hanged by their hands which were bound behind their backs. In addition, they were beaten severely and subjected to electric shocks on their chest, genitals and ears. Two witnesses claimed that they were forced to sit on bottles for minutes at a time. One witness testified that his shoulders had been dislocated. As a result of their tortures, victims suffered permanent physical and mental effects. One witness still bore numerous scars on his back.

10. One witness testified that, in order to pressure him to confess in 1992, interrogators brought his seven-month pregnant wife to the prison in which he was detained and hit her in front of him. When she started bleeding, the witness said that he agreed to confess even to things that he had not done. Thereupon, he was hit on the head and lost consciousness. His wife was then raped.

11. Another witness who had participated in the 1991 uprising in southern Iraq testified that he had later been arrested by the local security forces and

detained for two weeks. He testified that a tattoo on his arm was removed by interrogators using a device normally used for peeling potatoes.

12. Testimonies given by military deserters concerning penal amputations confirmed that this practice continued to be enforced in 1995. Large numbers of army deserters or draft evaders were said to have been mutilated in this way with many among them dying of gangrene after their ears had been cut since no medical assistance was permitted to them. Persons who have undergone this type of mutilation were also said to be reluctant to leave their homes and sometimes wear turbans when they do. Witnesses confirmed that doctors were forced to perform the operations or receive heavy penalties for refusal. Witnesses also alleged that, in 1995, a number of doctors were executed in Amara for refusing to tattoo deserters on their foreheads as required by governmental decree. Some doctors who had refused to implement the decrees were said to have had their own earlobes cut.

13. On 29 August 1996, the Permanent Mission of Iraq to the United Nations Offices at Geneva addressed a note verbale to the Centre for Human Rights containing the text, in Arabic, of the Revolution Command Council's (RCC) Decree No. 81 of 5 August 1996 concerning the suspension of the application of portions of RCC Decree No. 115 dated 25 August 1994 (for the full text of RCC Decree No. 115, see A/49/651, annex).

14. The substantive text of RCC Decree No. 81, which bears the signature of President Saddam Hussein, reads as follows:

> "Pursuant to the provisions of article 42 (a) of the Constitution, the Revolution Command Council has decreed as follows:
>
> "1. Paragraphs 1, 2 and 3 of Revolution Command Council Decree No. 115 of 25 August 1994 shall cease to have effect.
>
> "2. This Decree shall enter into force from the date of its publication in the Official Gazette."

15. The effect of Decree No. 81 is to stop the punishment of amputation of the auricle of the ears and the tattooing or branding of the foreheads of army deserters, draft evaders or persons who sheltered or protected them. The Special Rapporteur welcomes the promulgation of Decree No. 81 which will stop such inhumane acts which constitute gross violations of human rights, as previously analysed by the Special Rapporteur (see A/49/651, paras. 44-71, E/CN.4/1995/56, paras. 32-43, and E/CN.4/1996/12). However, it is to be noted that RCC Decree No. 81 applies essentially to military personnel who have deserted, or evaded, service. Unfortunately, several other RCC decrees prescribing amputations and tattooing as penalties for various ordinary crimes remain in force, including specifically RCC Decree Nos. 59, 74, 76, 92, 95, 96, 109, 117 and 125 of 1994. The Special Rapporteur has previously analysed these decrees prescribing mutilations (for the texts of these decrees and the analysis, see ibid.).

16. Due process of law is especially ignored through the wide-spread practice of holding family members and close associates responsible for the alleged

actions of others. This application of 'guilt by association' causes wide-spread fear which prevents all sorts of initiatives and paralyses civil society. People are not prepared to risk trusting anyone in any association with the fear that such associations, on the basis of spurious aspersions motivated by ulterior interests, may lead to loss of position, income, reputation, liberty and even life.

17. Reports supported by testimony allege that persons who are suspected of being opposed to the regime are frequently harassed when not officially prosecuted. For example, persons whose relatives have left the country have been removed from jobs, have been forced to change jobs every two to three months, have been deprived of passports and from benefits accruing from their jobs. It has been alleged that persons have been detained and tortured after incidents in which they took no part only on the basis of their background or family history.

18. Information was received that persons who have left the country have been approached abroad by Iraqi agents urging them either to return to the country or to work for the regime abroad. Others have received threats directed against themselves and their families. In all of the cases, the members of the family who had remained in Iraq were subjected to constant harassment and periodic interrogation about their relatives who had left the country. For example, one witness who had written articles criticizing the situation in Iraq in publications appearing in the foreign press testified that his elderly father living in Baghdad was arrested for two days and was threatened with the idea that his son would be sent to him in pieces.

19. Testimony was also received with regard to persons who have been released from prison on the basis of conclusion of their sentence or on the basis of an amnesty and then are re-apprehended by governmental agents, questioned about their activities and told to report regularly to a particular person. Persons are said often to be pressured to collaborate with the authorities upon their release from prison. Another means of harassment is the withdrawal of food ration cards. The families of prisoners or persons sought by the security authorities have also been evicted from their homes.

20. One witness who had been imprisoned from 1983 to 1991 at Abu Ghreib prison spoke about what happened to the members of his own family during his detention. According to his testimony, the Iraqi security immediately opened a file on his sister, a teacher in a secondary school. She was asked to report every two weeks to a security officer about her movements, her friendships and behaviour, all of which resulted in psychological suffering. She was indirectly denied the opportunity to get married since two of her suitors (army personnel) needed clearance from the authorities and two others refused to be linked (fearing retaliation) to a person whose brother was in prison. A second sister enrolled at the Institute for Teachers' Studies where membership in the Baath Party is mandatory. She concealed the fact that one of her brothers was in prison when applying. After completing her studies, she was transferred to teach in a provincial town. Since it is customary for employers to request information about the personal history of a prospective employee from their place of origin, they discovered that her brother had been arrested. Consequently, she was summoned to the Ministry of Education and dismissed. During the witness's

detention, his brother, who was a soldier in the war against the Islamic Republic of Iran, was constantly placed in the most dangerous locations on the front.

21. "Guilt by association" is facilitated by the authorities through administrative requirements relating to reporting. For example, families are required to report if one of their members is a deserter. If not, they could be subjected to eviction from their places of residence and their government food ration cards could be revoked. In order to avoid such treatment, they should report to their local Baath Party sections denouncing the deserter in their family in order to obtain a paper indicating that they had turned him in.

C. Freedom of opinion and expression

22. With regard to "the freedom to seek, receive and impart information and ideas of all kinds" according to article 19 of the International Covenant on Civil and Political Rights, it should be noted that all persons interviewed testified that all means of mass communication, including the press, television, radio and the news agencies, are State owned or extremely closely controlled. The Government has strengthened its control over the information media through a series of enactments, such as Press Act No. 206 of 1968, which prohibits the writing of articles on 12 specific subjects, including anything that may be deemed detrimental to the President, the Revolution Command Council or the Revolution; section 16 of this law penalizes violations with terms of imprisonment entailing compulsory labour. Thus, the Government has transformed the media into an instrument of propaganda through which it can dominate and control the flow of information.

23. More importantly, RCC Decree No. 840 of 4 November 1986 prohibits any criticism of the President, the RCC, the National Assembly, the Government or the Baath Party; this Decree has been analysed previously by the Special Rapporteur. A person convicted of offences under this decree may receive a sentence ranging from a prison term, including life imprisonment, to execution. Decrees have also been issued according to which persons who leave the Baath Party may be executed, as is the case with persons joining the Baath Party without declaring to which party they had previously belonged. As to freedom of information, it has been reported that the official gazette of the Republic of Iraq, Alwaqai Aliraqiya, in which governmental laws, decrees, orders and circulars are published, has a restricted circulation and that even the members of the legal profession have difficulty in obtaining copies.

24. Implementation of the decrees restricting freedom of expression are known to be strictly applied. One witness reported that, in 1993, a telephone operator warned a person not to call abroad because the lines were bugged. Subsequently, the operator was arrested, taken to his place of work and executed in front of his colleagues.

25. In 1994, Omar Mohammed Fadil, a famous Iraqi "oudah" (a stringed musical) instrument maker who had worked with Iraqi intelligence during the occupation of Kuwait, expressed his wish to see his family in Kuwait. He was reportedly shot

in the head in front of his apartment, apparently to prevent him testifying against the Government of Iraq.

26. In 1995, a car mechanic was reportedly killed by being shot in the head in his Volkswagen car after having expressed "his disgust at the Saddam Hussein regime".

27. As concerns the freedom of the press and the publication of written materials, the Ministry of Culture and Information periodically holds meetings at which the orientation and general guidelines are provided. The official views are thus transmitted to the subordinate offices and are adhered to until there is a change in official position or until there is new information on the subject. The "official" views are said to represent either those of the President or those of the Baath Party. One person provided the example of an instruction given to the written media during the war between the Islamic Republic of Iran and Iraq concerning the mandatory derogatory way of referring to Iranians as "fire-worshipping Persians". During the second Gulf War, it was reportedly mandatory to refer to the President of the United States of America as "the killer Bush".

28. As concerns Iraqi journalists, they are placed under a lot of pressure to join the Baath Party. They must obey orders when told what to write, especially instructions coming from the President's son, Uday. The telephones of journalists are said to be tapped. Those perceived as not obeying the official line are reportedly sent to camps and subjected to degrading treatment such as the shaving of one half of their mustache, shaving of their hair on only one side of the head or pulling out of one or two teeth. An example was given of the humiliation of two elderly and very well-known journalists during a conference in Baghdad. While they were taking the floor on the podium in front of their colleagues, the President's son, Uday, who brought his friends with him to the conference, were said to have started to pelt them with tomatoes since they were perceived as not following his orders. They were subsequently beaten by the army and forbidden from exercising any activities having to do with the press. This was meant to serve as a deterrent for other journalists who were present at the meeting and witnessed the whole scene.

29. Most accusations levelled against journalists concern spying or aiding a foreign State. For example, one journalist working for a well-known publication was said to have been abducted and then extrajudicially executed on the accusation of spying. It was later discovered that he had negatively commented upon an article which contained criticism against the Shias; the article had apparently been written by Saddam Hussein under a pseudonym. Journalists are reportedly judged in special courts and not given access to legal counsel or allowed family visits. The example was given of a journalist who was sentenced to seven years imprisonment for collaborating with foreigners. According to testimony, what is meant by "collaboration with foreign countries" is very subjective and may amount to writing about the exchange rate of the United States dollar, about prices in the market or that some situation in the country is very bad. Another journalist was said to have been sentenced to life imprisonment for telling a joke about the President.

30. In order to be published, an article reportedly needs to be cleared by: (a) the chief of section; (b) the secretary of the editor; (c) the editor-in-chief; (d) the president of the unit. Journalists are required to mention the President as often as possible - in articles on any subject, including culture and sports. Even if one wants to distance one's self from politics and write, for example, about the theatre, the impact of Saddam Hussein on theatre life is to be mentioned. General guidelines on what to write are reportedly issued at weekly meetings. Journalists are allegedly told when to criticize a particular country or raise a particular issue. It has been stated that if two or three months have passed without a journalist having written about the President, they become subject to suspicion and may face problems at work. It has been reported that a list of journalists who had left the country was published in which they were described as traitors. Persons who have expressed their views about the war between Iraq and Kuwait, suggesting that the invasion was unjustified, were reportedly singled out and removed from their units if serving in the army.

31. Foreign journalists who are allowed into the country are generally accompanied closely by persons from the Ministry of Culture and Information who, in fact, belong to the security service which deals with foreigners. As a consequence, they are limited in their freedom to investigate. Prospective interviewees are also dissuaded through fear of association.

32. The Ministry of Culture and Information, Act No. 94 of 1981, is also noteworthy insofar as it stipulates that the Ministry is to develop all aspects of culture "in accordance with the principles of the Arab Baath Socialist Party in Iraq". This type of provision illustrates the central role played by the Baath Party in the formulation of policies concerning information and culture. It also implies that no other culture or information is to be supported or, indeed, tolerated.

33. Intellectuals are under constant pressure to cooperate with the Government and place their talents at its disposal. In order to avoid pressure, intellectuals try to keep a low profile either by leaving Baghdad or becoming reclusive. Numerous Iraqi intellectuals have left the country simply because they refused to say, write or endorse something which is not in accordance with their beliefs and values, i.e. to avoid serving as instruments of propaganda for the regime. In addition, failure to comply with the dictates of the Government raises the risk (to the individual and his or her family) of arrest, detention, torture or even death. The exodus of Iraqi intellectuals and artists is said to have led to a major deterioration of the cultural life of Iraqis. In one example cited, the literary magazine titled Al Aklam, which in the 1970s contained several literary articles and poems, has now been reduced by more than one half its volume with the value of its contents also said to have declined dramatically; it is now considered merely as an instrument of propaganda.

34. Given the difficult economic situation prevailing in Iraq, and taking into consideration the low average salary of journalists, writers and artists, the means available to the Government to exercise pressure on these persons and to effectively require them to produce for the regime have been enhanced. The Government offers periodic financial handouts and awards, e.g. on the occasion of important anniversaries, when such journalists or writers flatter the regime

in their "creations". Acceptance of such handouts, which is effectively compulsory, is perceived by some intellectuals as betrayal of their own consciences and as compromises of their intellectual integrity such that many of them are said to have been driven to acts of despair.

35. Books can be published only with the authorization of the Ministry of Culture and Information. Books published are usually those of writers closely linked to the regime. It has been reported that attempts were made to enrol all writers and intellectuals in the Baath Party. If a writer finds an editor outside the country, approval of the Ministry is required and censorship applied. Publications from abroad are generally prohibited. The example was given of a book by a well-known Iraqi writer published in Beirut. The book was not officially banned in Iraq, but only 20 copies were reportedly allowed into the country. Employees of the Ministry of Culture and Information were then reportedly ordered to purchase the 20 available copies.

36. According to testimony, private possession of a typewriter, photocopying machine or personal computer causes suspicion. It is also said to be well known that written correspondence between Iraqis and persons living abroad is subject to systematic surveillance.

37. It has been reported that direct telephone communication with foreign countries has been effectively abolished. Those wishing to telephone abroad are required to go to telecommunication centres, show their identity cards, register with the operator and wait to be called to a cabin to speak, at a prohibitive price. In addition, it has been reported that telephone calls of persons in foreign countries wishing to speak to their families in Iraq have been answered by operators who have asked them, inter alia, who they were, where they were calling from and why they had left the country.

38. From the testimonies received, and noting the laws and regulations concerning the media and other forms of expression, including artistic forms, the possibility for citizens to freely express their opinions is seriously undermined if not totally meaningless. This freedom is said to be further circumscribed by the activities of the security services and their extensive network of informers which reportedly spreads fear and suspicion among the population.

D. Freedom of movement

39. It is not possible to leave Iraq lawfully without a valid exit visa. All the witnesses indicated that exit from the country requires possession of specific government authorization, which is very difficult to obtain. Applications for exit visas require certificates of nationality, a security clearance, certification from the Ministry of Defence stating that they have regulated their situation concerning military service, identity cards, certificates of residence and the government food ration card. In connection with the requirement of a security clearance, many witnesses reported that they have been denied travel permits on the basis of suspected oppositional opinions and activities. Some witnesses stated that because they have been detained during a period of time, they were not, upon their release, permitted to travel

and, in many cases, members of their families were also denied this freedom. Women suffer additional restrictions: they require permission from their husband, father or elder brother and must generally be accompanied - although permission to travel may then be denied to the relevant male family members.

40. In the fall of 1995, the Government of Iraq increased once again the exit tax to 400,000 Iraqi dinars (700 to 800 United States dollars) on Iraqis travelling abroad - an enormous sum of money for virtually every citizen (passports themselves reportedly cost only some 50 Iraqi dinars). It is clear that such a measure is of a discriminatory nature as it reserves travel abroad for only the most privileged who can afford to pay the large sum of money. This is exacerbated by the fact that separate bribes are often to be paid in order to obtain each of the cited documents. Irrespective of the prohibitive financial obstacle to travel abroad, persons in the liberal professions are not allowed to leave the country unless they have a clearance from the security services and if they leave a deposit which consists of an enormous sum of money in order to ensure that they will return. In relation to such professionals, it has also been stated that even if they are formally told that they may leave, administrative difficulties can still be created to prevent them from obtaining the necessary papers.

41. As regards the freedom of movement within the country, testimony confirms that, since the uprising in 1991, travelling to the south of the country from Baghdad to visit one's family is viewed with suspicion. It has been reported that the checkpoints between Baghdad and the southern part of the country remain very numerous.

42. With respect to movement between the central part of Iraq and the northern territories from which the Government withdrew its administration in October 1991, the Government recently announced that the extraordinary restrictions on movement were lifted as of 10 September 1996. Specifically, the Minister for Foreign Affairs, Mohammed Said al-Sharaf, announced, inter alia, on State-run television that "President Saddam Hussein, may God preserve him, has ordered the lifting of all emergency measures which were necessitated by previous extraordinary conditions on the movement of people to and from the autonomous provinces, including the internal trade". The same announcement was also published in Al-Thawra newspaper on 12 September 1996.

E. The nature of the political regime

43. The Special Rapporteur has previously reported upon and analysed this matter in detail (see, in particular, E/CN.4/1994/58, paras. 159-189). However, in order to fully appreciate the situation of civil and political rights in Iraq, i.e. the virtual absence of their assurance, it is worthwhile recalling the main features of the prevailing political regime in the country. In particular, the system of government has been described as not only being one-party, but one-man. In simple terms, it is a dictatorial, totalitarian regime. Contrary to the requirements of article 21 of the Universal Declaration of Human Rights, the genuine will of the people is certainly not the basis of the authority of government in Iraq, nor are the obligations to guarantee "freely chosen representatives" or hold "genuine periodic elections ...

guaranteeing the free expression of the will of the electors' respected in Iraq as required by article 25 of the International Covenant on Civil and Political Rights.

44. Maintenance of the system has been achieved by transferring, through legal instruments and sheer power, the effective authority of governmental institutions to the Baath Party structure and, more particularly, to the security apparatus. Within this system, the country is ruled by a small group of people composed mainly of relatives of the President. It is reported that the inner circle of power is shrinking, even in the army.

45. Testimonies received provide further evidence of the essential irrelevance of ostensible governmental institutions. According to information received from reliable sources (a former Minister, a Deputy Minister and a Director-General of the Presidency - who wish to remain anonymous), the effective power of the Council of Ministers is extremely limited since the President exercises the real executive authority. For example, Ministers do not even counter-sign decrees promulgated by the President, regardless of their content. The President is also empowered to appoint and dismiss the Ministers, including the Prime Minister, at will. Thus, the Ministers are not accountable to the National Assembly but to the President from whom they receive their orders and directives.

46. According to article 61 of the provisional constitution, the Council consists of the Prime Minister and Ministers and is presided over by the President of the Republic. The powers of the Council are regulated by article 62 of the provisional constitution and the Council of Ministers Act of 1991. The Council drafts bills of law which are then submitted to the President of the Republic for promulgation in accordance with the provisional constitution. The Council also drafts and promulgates regulations, with the exception of regulations relating to the Ministry of Defence or the security authorities which are promulgated by the President without even consulting existing legislation or the regulations needed for implementation. Administration is also by Presidential order. A former Minister testified that he had learned about his own dismissal from the radio. In the case of another Minister, he simply received a telephone call at his home to come to his office and remove his belongings. There are said to be no regular meetings of the Council of Ministers, and the President of the Republic is said to be rarely present at the meetings which are held.

47. In the prevailing regime, there is absolutely no place for criticism or dissenting views, not even at the highest level; opposition is not tolerated. The country is run through extrajudicial measures. Order is maintained and work is achieved by harsh coercion. Persons are not even permitted the freedom to desist or resign. For example, it has been reported that no resignations are possible in the civil service; one can only be dismissed.

48. In the prevailing system, there is no rule of law. The February 1996 killings of Hussein Kamel and Saddam Kamel have been described by the official Iraqi press as the spontaneous administration of justice, aimed at clearing the shame brought upon the victims' tribe. The killings occurred without any legal

process and with total impunity. The perpetrators of crimes are said frequently to go without prosecution depending upon their positions and connections.

F. National Assembly elections

49. Information was received about the elections for the renewal of the four-year term of the National Assembly which took place on 24 March 1996. Out of the 250 seats, 160 deputies reportedly belong to the Baath Party, 60 are independent while 30 deputies representing the northern region were appointed by the President.

50. According to the Iraqi News Agency, as reported in the newspaper Asharq al-Awsat, dated 1 April 1996, the National Assembly is composed of the following number of deputies from each governorate: Baghdad is represented by 67 deputies. The northern Governorate of Niniwa (Mossul) is represented by 34 deputies. The southern Governorate of Basra is represented by 17 deputies, while Di Quar is represented by 13 deputies and Mastna has 4 seats. The central Governorates of Babel and Dayqali are represented by 13 each. The western Governorate of al-Anbar (Ramadi) is represented by 11 deputies. The Salah El Din, al-Taamim, Najaf, al-Qaddissiya and Wassat Governorates are represented by 9 each, while Missan Governorate is represented by 7, and Karbala by 6 deputies. It appears that representatives of tribes constitute the largest number of persons elected. In numerical order, the largest number of representatives come from the following tribes: al-Takriti; al-Jabbour; al-Saadoun; al-Dulaimi and al-Shamri. Women represent 7 per cent of the deputies (16).

51. For the northern Governorates of Arbil, Dohuk and Suleimaniyah, because the central authorities withdrew from the region in October 1991 leaving it to its own local administration, the population of several million did not vote and President Saddam Hussein nominated the deputies from that region.

52. During the first meeting which took place on 7 April 1996, deputies reaffirmed their commitment to the principles of the Baath Party. On 8 April 1996, deputies elected the former Prime Minister Saadoun Hamadi (former Prime Minister between 1991 and 1993) as the President of the current National Assembly. During a secret vote, he received 248 votes out of 250. An independent candidate obtained two votes. Saadoun Hamadi (a Shi'ite) is considered to be one of the closest associates of President Saddam Hussein. He has also held the positions of Minister of Petrol and Minister for Foreign Affairs.

53. Submission of applications for candidacy for election to the National Assembly is scrutinized by the Ministry of Local Government which comments on the applications before passing them to the Higher Elections Commission which is empowered to deny candidacy should it find an applicant insufficiently dedicated to the goals of the revolution or having failed to demonstrate a sufficient commitment in deeds. The Higher Elections Commission is constituted by order of the Revolution Command Council and is presided over by a member of the Revolution Command Council sitting together with the Minister of Local Government, the Minister of Justice and a representative of the Baath Party.

Whether members of the Baath Party or not, elected Deputies are nevertheless required to swear their support for the principles of the Baath Party and the regime. Among the beliefs required to be held are that the first and second Gulf Wars have glorified the country.

54. The selection of Baath candidates was reportedly made within the cells of the Baath Party which subsequently submitted the names of the candidates to the different sections and higher organs. It has been alleged that the Baath Party had instructed a number of its members to run as independent candidates, i.e. the 60 "independents" who were elected to the Assembly are actually members of the Baath Party.

55. Participation in the National Assembly is extremely limited by virtue of several legal and political constraints. In the first place, the National Assembly Act excludes naturalized Iraqi citizens or Iraqis born of non-Arab mothers from sitting in the National Assembly: article 14 (h) of the Act requires that representatives must be Iraqis by birth (born of a father who was Iraqi by birth) and born of an Arab mother. Article 14 (i) of the National Assembly Act also requires that Deputies must believe in the 1968 revolution and participated in the war effort against Iran in some appreciable manner. Other acts restricting participation in the National Assembly included Act No. 60 of 12 January 1982 which required membership in the Arab Baath Socialist Party (over which President Saddam Hussein presides with power to terminate membership). It has been reported that the remuneration received by the Deputies does not amount to a salary but should be considered as a gift from the President. In addition, it was stated that all the Deputies elected to the Assembly received a gift in the amount of 250,000 Iraqi dinars on the occasion of their taking of oath on 7 April 1996. It has been alleged that there are annually some 12 to 15 occasions for this type of handout, usually on the occasion of important anniversaries.

56. It has been indicated that the Assembly has a purely consultative role with regard to the President. It does not approve or criticize the law; its role is effectively limited, for example, approving the regulations governing the conduct of work of different ministries or choosing the names of streets and the like, with no influence whatsoever on governmental policy. Even the Cabinet is limited to discussions over logistical or administrative matters and sometimes those related to the economy. No decisions on security or other important matters are taken by the Cabinet.

57. The elections were described as a farce, especially as far as actual voting was concerned. It has been said that the names of the candidates who were ultimately elected were already ticked off on the ballot-sheets handed to the voters, although they were given the choice of selecting other candidates. It has been reported that, although voting was not compulsory, the turnout was high for fear of possible retaliation. As was the case with last year's referendum on the President, voters were obliged to indicate their addresses on a separable portion of the ballot.

58. As concerns information available to the voters, it has been said that no electoral programme was published or debated. It has been stated that the presentation of candidates amounted to a photograph, a brief description of

their studies, a list of the candidate's publications, and the record of their participation in the two Gulf Wars; emphasis was said to have been placed on the last "qualification".

G. Corruption

59. In the absence of the rule of law in general and given the essential nature of a dictatorial regime, one could speak of an entirely corrupt politico-legal order. While this may be so, there is also a wide-spread prevalence of administrative corruption which has been allowed, even encouraged, by the regime as a means of weakening the population and maintaining control. Bribery and theft by public officials are said to be a serious problem which has reached epidemic proportions since the Iraq-Kuwait War. Without exception, witnesses stated that through bribery they could buy passports, military documents, residence permits or any other document needed. The problem of bribery has reached such proportions that persons who were detained could buy their freedom if they had the right connections and were able to pay a sufficient amount of money. One person interviewed reported that he was arbitrarily arrested in 1991 by the security forces and detained in a detention centre called "death jail" located on the premises of the Iraqi Olympic Committee which is headed by President Saddam Hussein's son, Uday. According to the witness, he was released in 1994 when his family paid 1,250,000 Iraqi dinars.

60. It has been alleged that, since the Iraq-Kuwait War, contact with the administrative authorities increasingly involves corruption and bribery. The amounts needed reportedly depend on the documents sought, the highest prices being paid for a passport and an exit visa to leave the country. For example, bribes are reportedly lower for retired persons or persons who had completed their military service. Prices for this type of document allegedly also vary in accordance with the status of the person requesting it. These bribes may reportedly be as high as 1.5 to 2 million Iraqi dinars. Many people have to sell all their furniture or even their homes in order to obtain the necessary sums. In addition, persons who cannot leave the country because they hold sensitive jobs or practice a liberal profession can obtain passports only through bribery and forgery, i.e. under a false name and with fabricated personal data. Finally, it has also been reported that bribes ranging from 750,000 to 1.5 million Iraqi dinars are required to obtain a telephone line.

III. THE RIGHTS TO FOOD AND HEALTH CARE

A. Introduction

61. The Special Rapporteur has reported and commented upon the rights to food and health in all but one of his previous reports to the Commission on Human Rights and to the General Assembly (A/46/647, annex, paras. 52-54, 55 and 95-98; E/CN.4/1992/31, paras. 81-83, 138, 143 (w), 145 (o) and (p), and 158; A/47/367, para. 14; A/47/367/Add.1, paras. 6-14, 56 (a), (b) and (c), and 58 (a), (b) and (c); E/CN.4/1993/45, paras. 67-72 and 185; A/48/600, annex, paras. 33-42, 44-46, 58-59 and 62-88; E/CN.4/1994/58, paras. 72-79, 152 and 186; A/49/651, annex, paras. 89-98; E/CN.4/1995/56, paras. 44-47, 54, 67 (m) and 68 (c); and

E/CN.4/1996/61, paras. 30-40). Since his first appointment in June 1991, the Special Rapporteur has observed the constantly deteriorating situation endured by the population. This dire situation has met the steadfast refusal of the Government of Iraq to take advantage of resources available to alleviate the suffering of the people - as the Government is obliged to do under international law. As such, there can be no doubt that the policy of the Government of Iraq is directly responsible for the physical and mental pain, including long-term disabilities, of millions of people and the death of many thousands more.

62. Of evident relevance to the situation of economic rights generally in Iraq are the effects of the sanctions placed on Iraq pursuant to Security Council resolution 661 (1990) of 6 August 1990. As the Special Rapporteur has noted in the past, it must be understood that resolution 661 (1990) explicitly exempts medicaments and, in humanitarian circumstances, foodstuffs. There is, as such, no embargo on the purchase or supply of medicaments or foodstuffs. In addition, Security Council resolution 688 (1991) of 5 April 1991 places a special obligation on Iraq to cooperate with international humanitarian agencies and organizations in receiving medicaments, foodstuffs and related materials for humanitarian purposes in Iraq. Moreover, Security Council resolutions 706 (1991) of 15 August 1991 and 712 (1991) of 19 September 1991 enabled Iraq to sell, under United Nations supervision, up to 1.6 billion United States dollars worth of oil, of which 900 million United States dollars would have been for medicaments and foodstuffs. On 14 April 1995, the Security Council adopted resolution 986 (1995) which has since presented Iraq with the opportunity of selling oil up to the amount of 1 billion United States dollars every 90 days, on a renewable basis, in order to purchase essential food and medical supplies for humanitarian purposes. Unfortunately, the Government of Iraq chose, for almost six years (i.e. until the late spring of 1996), not to accept the United Nations-supervised sale of oil for humanitarian purposes on the grounds that to do so would "violate Iraq's sovereignty" or be "insulting". Neither of these assertions were demonstrated and the situation continued to deteriorate.

63. With respect to applicable standards through which the Special Rapporteur viewed the situation of human rights in Iraq, reference is to be made to two general obligations arising from the International Covenant on Economic, Social and Cultural Rights to which Iraq is a State party. According to article 2 of the Covenant, the Government has an obligation "to take steps ... to the maximum of its available resources". In interpreting this particular passage, the Special Rapporteur has previously referred to the authoritative General Comment 3 rendered by the Committee on Economic, Social and Cultural Rights at its fifth session in 1990 (E/1991/23), which reads in part as follows:

> "10. ... Article 2 (1) obligates each State party to take the necessary steps 'to the maximum of its available resources'. In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.
>
> "11. The Committee wishes to emphasize, however, that even where the available resources are demonstrably inadequate, the obligation remains for

a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances ...

"12. Similarly, the Committee underlines the fact that even in times of severe resource constraints whether caused by a process of adjustment, of economic recession, or by other factors the vulnerable members of society can and indeed must be protected ...

"13. ... The Committee notes that the phrase 'to the maximum of its available resources' was intended by the drafters of the Covenant to refer to both the resources existing within a State and those available from the international community through international cooperation and assistance. ..."

B. The "food-for-oil" agreement

64. As was the case with "the food for oil" formula presented to the Government of Iraq pursuant to Security Council resolutions 706 (1991) and 712 (1991), the Government initially rejected the offer made in resolution 986 (1995) - despite the fact that the total available annual sale of oil would amount to 4 billion United States dollars in the year, i.e. about one quarter of Iraq's total export sales prior to its invasion of Kuwait and the imposition of United Nations sanctions. Indeed, the United Nations offer received unfavourable responses from the Government from its inception and was turned down completely by both the Iraqi Cabinet of Ministers and the National Assembly.

65. In order to move ahead with the "food for oil" formula available pursuant to Security Council resolution 986 (1995), on 18 January 1996, the Secretary-General addressed a letter to Iraqi Deputy Minister Tariq Aziz inviting the Government of Iraq to start discussion on the implementation of the resolution. On 22 January 1996, the Government of Iraq accepted the Secretary-General's invitation to enter into discussion with the Secretariat of the United Nations with a view to implementation of the "food for oil formula". In view of his repeated recommendation that the Government of Iraq cooperate with the United Nations and accept the resources available to alleviate the suffering of the Iraqi people, the Special Rapporteur was pleased to note that, on 20 May 1996, the United Nations and the Government of Iraq concluded a Memorandum of Understanding (also known as the "oil-for-food agreement") which details the practical arrangements for the implementation of Security Council resolution 986 (1995), including duration and renewability of the agreement, distribution plan, establishment of an escrow account, sale of petroleum and petroleum products, procurement and confirmation of procedures, distribution of humanitarian supplies and observation of the distribution of humanitarian supplies.

66. The primary goal and overall purpose of the agreement was to ensure the effective implementation of resolution 986 (1995). Of particular importance in the Memorandum of Understanding is the inclusion of a distribution plan for the intended beneficiaries of humanitarian supplies. According to the Memorandum of Understanding, the Government of Iraq undertakes to effectively guarantee equitable distribution to the Iraqi population throughout the country of

medicine, health supplies, foodstuffs, and materials and other supplies for essential civilian needs (hereinafter humanitarian supplies) purchased with the proceeds of the sale of Iraqi petroleum and petroleum products. In order to comply with Iraq's obligations under international human rights law, this commitment to "equitable distribution" must be non-discriminatory and respond to the genuine needs of the people.

67. Since the Government of Iraq has withdrawn its administration from much of the three northern Governorates of Arbil, Dohuk and Suleimaniyeh, the distribution of humanitarian supplies in the three northern Governorates is to be undertaken by the United Nations Inter-Agency Humanitarian Programme on behalf of the Government of Iraq, under the distribution plan with due regard to the sovereignty and territorial integrity of Iraq.

68. The observation process will be conducted by the United Nations through the dispatching of a number of observers to the country. The objectives of the United Nations process shall be, inter alia, to confirm whether the equitable distribution of humanitarian supplies to the Iraqi population throughout the country has been ensured, to ensure the effectiveness of the operation and determine the adequacy of the available resources to meet the population's humanitarian needs.

69. In accordance with the Memorandum of Understanding, the Government of Iraq submitted, in June 1996, the distribution plan which was prepared for the purchase and distribution of food, medicine, medical supplies and other essential needs. According to this plan, food distribution will be implemented within the existing rationing system through the government ration cards. Medicine and medical supplies will reach the beneficiaries through hospitals and primary health care centres throughout the country using the existing distribution system.

70. According to the Government of Iraq, every Iraqi citizen, Arab and foreign resident in Iraq is entitled by law to obtain a "rationing card" from the Registration Centres established throughout the country, i.e. from 400 centres. These centres establish lists of families by name, age and number of consumers in each household. The documents required to obtain a rationing card are: for Iraqi citizens, a civil status identity card; for foreigners, a residence identity card and passport, together with a residence confirmation.

71. The Special Rapporteur notes that, while the public rationing system has reportedly so far functioned in general terms quite efficiently, the procedure to obtain a "rationing card" is onerous and often arbitrary and, moreover, it is evident that the system is easily susceptible to manipulation for political purposes. Indeed, the Special Rapporteur has received reports over a long period of time, supported by considerable testimony, alleging that the system of rationing is employed on a discriminatory basis in certain regions and between regions as a means of political repression and persecution.

72. With regard to the procedure to obtain a rationing card, reports indicate that citizens have to pass through a complex administrative maze which is excessively time-consuming and often entails bribery along the way. First they must obtain a confirmation of domicile from the neighbourhood Mukhtar (Council),

which must be authenticated by the neighbourhood Information Office, and an information card (containing security information) from the same Information Office. Thereafter, they must go to the neighbourhood People's Council, taking the following documents: the Civilian Affairs identity card (original and copy), the certificate of Iraqi nationality (original and copy), the marriage certificate if married (original and copy), the domicile card (original and copy), the confirmation of domicile obtained and authenticated as explained above, and the military service booklet for those discharged from service or a letter from the military unit confirming the person's ongoing military service for those not discharged from service. The supporting letter then obtained from the neighbourhood People's Council is to be brought to the head office of the Governorate's People's Councils. The letter is then taken from the Governorate's People's Councils to the Ministry of Trade. A letter from the Ministry of Trade is then brought to the Ministry of Trade's warehouses in the area of domicile, whereupon a foodstuff's agent is designated near the place of domicile.

73. As for the equity of the Government's food distribution, it should be noted that the matter of possession of valid identification cards place most of the inhabitants of the remaining southern marshes in a particularly vulnerable position because most of them typically have never had identification cards due to their unique life-style situation. The process of seeking and obtaining such documents also places these persons at risk of attacks against their personal security in so far as they are immediately suspected, if not accused, of anti-Government activities or are held responsible for the real or suspected anti-Government activities of their relatives. Without guarantees of due process of law, the administrative procedures relating to the governmental rationing system constitute a serious threat to many persons.

74. In addition to this complex administrative process, there are many allegations that the system of rationing is unfair, corrupt and arbitrary. For example, the system is said to be widely used by the Iraqi Government to reward political supporters and to silence opponents. Persons requesting a "rationing card" must be known by the security and party organs as loyal to the Government. Persons, families and tribes accused of cooperating with the opposition are not allowed to receive coupons. This restriction may be lifted if new proof is provided of their loyalty to the President and Baath Party.

75. Tribal areas and villages surrounding the southern towns which are considered by the Iraqi Government as hiding places for its opponents are also denied the rationing cards. For example, the Special Rapporteur has received credible reports that most families of the al-Hayyadir tribe who reside near the Salih River in the al-Amdayna district in Basra Governorate have been denied rationing cards. Reports also indicate that about 70 per cent of the families living near the al-Izz River are without rationing cards; among these persons are families of the al-Bubakhit, al-Shafaniya, Beni Malik and al-Hayyadir tribes. Some families of the al-Shariji tribe living in al-Muwajid in Chebayish district in Basra Governorate have also reportedly been denied rationing cards.

76. Another means of abusing the system of rationing is the governmental practice of periodically replacing rationing cards, thus requiring new scrutiny of beneficiaries and their families. Rationing cards are also said to be

cancelled if any member of the family is arrested on any charge, whether for an ordinary crime or a political offence. This is also so in the case of an army deserter or draft evader. During the present hardships of the Iraqi people, it can safely be assumed that this provides a further incentive not to engage in any kind of political activity.

77. With respect to the time of implementation of the Memorandum of Understanding, the Special Rapporteur observes that, subsequent to the Government's use, on 31 August 1996 of military personnel and heavy arms against the civilian population in northern Iraq and in view of the insecure situation which has thereupon prevailed, the Secretary-General announced, on 1 September 1996, the decision to delay deployment of United Nations personnel and effectively to suspend implementation of the Memorandum of Understanding (see SG/SM/96/189). The Special Rapporteur acknowledges that the security of United Nations personnel must be assured in order for them to perform their tasks. However, he regrets that this situation precipitated by the actions of the Government of Iraq effectively postpones implementation to the detriment of those persons in need.

C. Access to food

78. As a consequence of the Government of Iraq's long intransigence on the 'food for oil' formula, the economic situation continued to deteriorate and prices of essential food items and basic living commodities fell even further out of reach for a large part of the population. In its September 1996 assessment of the emergency requirements for the period October-December 1996 by the United Nations Consolidated Inter-Agency Humanitarian Cooperation Programme for Iraq, the Department for Humanitarian Affairs has stated as follows:

> 'The humanitarian situation throughout Iraq is dismal. The majority of the civilian population is believed to be living below the poverty line. At present, family incomes are generally not more than a fraction of pre-1991 levels. The non-replenishment of basic food and health items in the market place, linked largely to expectations regarding the implementation of Security Council resolution 986 (1995), has resulted in price increases of 50-100 per cent during the period between late August and early September 1996. The cumulative effects of economic sanctions, hyperinflation, unemployment and of this year's 30 per cent drop in crop production have contributed significantly to the hardship and suffering of the vulnerable groups of the Iraqi population which have now reached disquieting levels.'

Indeed, the Special Rapporteur reached such a conclusion long ago and has been expressing his disquiet about the unnecessarily poor humanitarian situation in Iraq since his intial report to the forty-sixth session of the General Assembly in November 1991 (A/46/647).

79. At present, the average Iraqi citizen depends on food rations, introduced by the Government in September 1990. The system provides basic foodstuffs to the population at 1990 prices, which means that they are virtually free.

However, the number of distributed items and their volumes have declined since introduced. As of January 1996, the subsidized food basket distributed by the Government contained five essential food items, namely wheat-flour, rice, sugar, tea and cooking oil; infant milk powder is also distributed to children under one year of age. A report on the health conditions of the population in Iraq since the Gulf crisis, published in March 1996 by the World Health Organization (WHO), indicates that the rationed foods supply one third of the daily minimum caloric needs.

80. With food rations meeting only one third of the usual food energy needs, and meat being too expensive to afford on an average salary, vegetables and fruits have increased in importance in the diet. The prices of these items have also risen, although production has increased. Other items in the daily diet, especially dairy products and poultry, in which the country was almost sufficient, are now being sold on the open market at very high prices, which only those at the highest income level can afford. The animal stocks have, consequently, declined steeply, as has the production of dairy products.

81. It is to be noted that some selected citizens receive additional assistance from the Government. Since 1 October 1994, about 3.5 million persons, comprising all civil servants in active service, military, police, security and other elite forces, civil servant pensioners, military pensioners, social welfare beneficiaries and war veterans with a 60 per cent or greater disability, receive a monthly allowance of 2,000 Iraqi dinars.

82. Although the number of privileged groups and persons appears to be declining, certain groups remain privileged by comparison to others, e.g. high-ranking military officers and Baath Party elite. This privilege is to be observed not only in the fact that the average salary of a civil servant is one half that of a military officer, but the Government is said to distribute supplementary amounts of eggs, chicken, red meat, frozen fish, as well as home appliances such as freezers at less than half the market prices to general directors and leaders of the Baath Party and the State offices. More importantly, members of the Baath Party and military officers enjoy their own food distribution network through cooperatives and they receive special salary allowances depending on their relationships with their supervisors and the extent of their support for the official policies of the Government. It has also been reported that two types of salaries exist in Iraq: regular ones and those received by the members of the Baath Party. Persons who have been in the Baath Party for at least 10 years are called "Friends of Saddam" and receive an additional 25,000 to 30,000 Iraqi dinars a month in comparison to the 7,000 to 10,000 salaries that they would receive if this were not the case. Of course, this is to say nothing of the bribes and "gifts" which Government and Baath Party officials may obtain by virtue of the important administrative positions they may be assigned. Moreover, the inner circle of the leadership does not appear touched by any economic hardships affecting their access to food or health care. Indeed, some of the leadership have increased their real and relative wealth at the expense of the population through profits derived from the rationing system and the skewed market conditions.

83. During the mission to Amman, all Iraqis interviewed were unanimous in stating that the food and health situation, and the socio-economic situation in

general, had become precarious. All of them reported that, while in Iraq, they were preoccupied in their daily lives trying to achieve a subsistence-level existence.

D. The health situation

84. According to the above-mentioned study published by WHO in March 1996 (i.e. "Health conditions of the population in Iraq since the Gulf crisis"), the Iraqi health infrastructure remains crippled. There is a lack of minimum health care facilities, pharmaceutical and other related equipment and appliances. Medical supplies remain scarce. Hospitals report that malnutrition has become a major contributor to many health problems. Over 50 per cent of the hospitalized children under the age of five suffer from malnutrition. The lack of supplies and spare parts for electricity generating plants, water-purification plants and sewage treatment facilities has led to significant increases in waterborne and diarrhoeal diseases. Diseases such as cholera, typhoid and malaria, which were once essentially under control in Iraq, have rebounded since 1991 at epidemic levels. It is estimated that 500,000 Iraqi children have died because of the non-compliance of the Iraqi Government with Security Council resolutions 706 (1991), 712 (1991) and 986 (1995) since the end of the Gulf War. Moderate to severe malnutrition in children is prevalent in several governorates. The infant mortality rate and the mortality rate for children under five years of age have increased due to malnutrition of mothers and children as well as the prevalence of infectious diseases.

85. Access to health care is also said to be extremely limited. As in the case of access to food rations, the problem of identification cards interferes with access to health care available through the urban medical centres. Public hospitals are reportedly functioning at only half of their capacities due to the shortages of medical equipment and available medicines. Receiving special medication in public hospitals is said to require bribes and personal connections in order for the citizen to enter the hospital to be treated, or to undergo surgery. There is also systematic discrimination as described above in relation to access to food. In particular, Baath Party members and military leadership are given special treatment in exclusive hospitals such as "Ibn Bitar" and "Ibn Sina" which have the necessary equipment and services. For those who are able to afford it, another alternative would be the private sector where the phenomenon of private hospitals under the control of a group loyal to the President and his inner circle is growing. For the average citizen, a last alternative for medical care can be found on the black market where costs are exhorbitant.

86. The distribution of limited health care resources also takes place on discriminatory grounds by region. The central Iraqi cities continue to enjoy preferential treatment. The infrastructure (such as water purification and sewage systems) in the southern cities continues to lag far behind that of the central parts of Iraq. Access to health care is also said to be extremely limited for the marsh Arab people who remain in the region. As in the case of access to food rations, the problem of identification cards interferes with access to health care available through the urban medical centres.

IV. THE SITUATION IN NORTHERN IRAQ

A. Introduction

87. Following the uprisings in northern Iraq in March and April 1991, and the subsequent withdrawal of the central administration and Iraqi security apparatus from the region in October 1991, the predominantly Kurdish region has been self-administered. Unfortunately, disputes between Kurdish factions contributed to insecurity in the region with significant inter-factional armed clashes in 1996.

88. According to reports received by the Special Rapporteur, on 31 August 1996, between 30,000 and 40,000 Iraqi troops, composed of three divisions of the Iraqi Republican Guards, backed by 80 tanks, heavy artillery and helicopters, first shelled and then captured the city of Arbil, the local capital of the predominantly Kurdish self-administrated zone. As justification for these actions, the Government of Iraq announced that the President of the Kurdish Democratic Party, Mr. Massoud Barzani, had on 23 August 1996 sent a letter to President Saddam Hussein requesting him to intervene with his forces in northern Iraq in order to assist the Kurdish Democratic Party in gaining control of the city of Arbil.

89. The use of Iraqi military forces, including heavy weapons, against civilian targets is a clear violation of Security Council resolution 688 (1991) of 5 April 1991 which demands that the Government of Iraq cease oppression of its civilian population, particularly in the northern Kurdish area.

90. After careful examination of testimonies and reports received, the Special Rapporteur believes the following violations of human rights took place on a large scale during the military operations.

B. Use of excessive force

91. As appears from reports received, many villages were shelled by Iraqi artillery before they were entered by government troops. On 31 August and 1 September 1996, the Kurdish towns of Bustaneh and Kifri, south of Suleimaniyah were attacked by Iraqi air force and heavy weapons. The area of Arbil was subject to shelling from Iraqi positions along the Arbil-Mosul to Arbil-Kirkuk roads (north to south-west of Arbil). On 1 September 1996, the district of Shorash in Suleimaniyah was shelled by Iraqi forces. It was further reported that on the same day the Sheoshur area near Taqtaq, 25 km north-west of Chamchamal (on the Kirkuk-Suleimaniyah road), was shelled resulting in many casualties.

92. The indiscriminate shelling by the Iraqi forces of civilian settlements in the northern regions of Iraq has been a recurrent practice well before the recent clashes. For example, on 1 January 1996 the villages of Lower Darman and Upper Darman, situated on the lower Zab river in the Sheik Bazani area, were reportedly bombed by helicopters based in Kirkuk and by tanks and armoured battalions of the 8th Division. As a consequence, several homes were destroyed. On 24 April 1996, the villages of Pir Da'ud and Lajan and their surrounding

areas, located 20 km south and west of Arbil, were the object of heavy bombardment lasting at least six days. On the same date, the villages of Khur and Qashqa, near the Arbil-Kirkuk road, were reportedly shelled.

C. Summary executions

93. A local hospital reported at least 100 casualties following the drive by Iraqi troops into Arbil. Witnesses to the fighting estimated the number of dead in Arbil to be in the hundreds, if not many more. It was reported that the Iraqi security forces, helped by members of the Kurdish Democratic Party, executed several members of the Iraqi National Congress and the Patriotic Union of Kurdistan in the streets following house-to-house searches by Iraqi security with lists bearing specific names. For example, on 31 August 1996, 96 Iraqi army officers and soldiers, who had previously deserted the Iraqi army and fled to northern Iraq, were reported to have been captured by Iraqi security forces near the town of Qushtapa, located 22 km south of Arbil, and executed in front of the local population. In a "Statement to Iraqi public opinion regarding Iraqi violations against Iraqi opposition elements in Arbil and the Kurdistan Democratic Party's position regarding them", issued on 11 September 1996, the Spokesman for the Kurdish Democratic Party confirmed the total responsibility of the Iraqi army in the executions of "some elements of the Iraqi National Congress who were in Qushtapa ... with forces of the Talabani Party [i.e. Patriotic Union of Kurdistan]". In the same statement, the spokesman acknowledged the responsibility of "the Iraqi intelligence unit" in the arrests of several individuals following the event in Qushtapa: "a group of dissidents was indeed arrested, comprised of Iraqi National Congress, Turcoman groups, and Islamic Action personnel". The fate of these persons is unknown and it is generally believed that they were also summarily executed.

D. Arbitrary arrests

94. Several members (including the Deputy Speaker) of the Parliament which was organized in the self-administering northern region, together with Ministers (including the former Prime Minister of the regional government) as well as a large number of intellectuals, lawyers, journalists and university lecturers are reported to have been arrested during the military operation of Iraqi forces at the end of August and in early September 1996. Between 31 August and 4 September 1996, several sources reported that at least 1,500 persons were arrested in Arbil (including women and children) by the Iraqi Security Forces and taken by military trucks to a prison located at the headquarters of the First Army Corps in Krikuk. It was furthermore reported that, on 2 September 1996, 150 members of an oppositional group and persons suspected of involvement with oppositional groups (all Iraqi Arabs), were detained with their family members by secret service personnel or Mukhabarat in Salahuddin, located 25 km north-east of Arbil. Their fate remains unknown.

E. Responsibility pertaining to the military operation of 31 August 1996

95. International humanitarian law requires that minimum norms be respected in internal armed conflicts. The norms and specific standards of international human rights law also apply in situations of armed conflict, as possibly varied by permissible derogations; since the Government of Iraq has not availed itself of the opportunity of derogation, all relevant standards apply (on the question of derogations, see E/CN.4/1992/31, paras. 34-39).

96. With regard to international humanitarian law, the Republic of Iraq has freely acceded to the Geneva Conventions of 12 August 1949 relative to the humanitarian laws of armed conflict. Treaty obligations regarding conflicts of an internal nature derive from common article 3 to the four aforementioned conventions.

97. In addition to its treaty obligations, Iraq is also obliged to respect the relevant rules of international customary law, particularly those concerning the "elementary considerations of humanity" in times of armed conflict as well as in times of peace as expressed by the principles in common article 3 to the Geneva Conventions of 12 August 1949.

98. As regards obligations specifically in internal armed conflict, the International Conference on Human Rights held in Tehran in 1968 requested the Secretary-General, "after consultation with the International Committee of the Red Cross, to draw the attention of States Members of the United Nations system to the existing rules of international law on the subject and to urge them to observe that in all armed conflicts, the inhabitants and belligerent are protected in accordance with 'the principles of the law of nations derived from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience'". The cited standard, known as the "Martens clause", was included in the preamble to the Hague Regulations of 1907 concerning the Laws and Customs of War on Land and was then incorporated into the four Geneva Conventions of 1949 (art. 63 of the first, art. 62 of the second, art. 142 of the third and art. 158 of the Fourth Geneva Convention).

99. Three customary principles of human rights protection are incorporated in the Martens clause: (a) that the right of parties to choose the means and methods of warfare, i.e. the right of the parties to a conflict to inflict injury on the enemy, is not unlimited; (b) that a distinction must be made between persons participating in military operations and those belonging to the civilian population so that the latter are spared to the maximum extent possible; and (c) that it is prohibited to launch attacks against the civilian population as such.

100. The Martens clause has acquired a customary character and thus applies independently of participation in the treaties containing it. It is of a non-derogeable nature and applies whether or not a state of war has been declared or the state of war is recognized by a party to the conflict. In 1949, the International Court of Justice, in the Corfu Channel case, recognized the customary nature of these humanitarian requirements: it ruled that "elementary considerations of humanity" belong to the general and well-recognized principles

which have to be observed in peacetime as well as in times of armed conflict (The Corfu Channel Case, Merits, I.C.J. Reports 1949, p. 22).

101. The International Court of Justice expanded upon this doctrine in the Barcelona Traction case of 1970 when it stated that "there are obligations of a State towards the international community as a whole" (Case concerning the Barcelona Traction, Light and Power Company Limited, second phase, Judgement of 5 February 1970, I.C.J. Reports 1970, para. 33). It went on to state that these obligations may arise "also from the principles and rules concerning the basic human rights of the human person" some of which "have entered into the body of general law" (ibid., para. 34).

102. As concerns the application of these principles in situations of peace, the International Court of Justice elaborated upon the Corfu doctrine in 1986 in the case of Nicaragua v. the United States of America when it held that "certain general and well-recognized principles, namely: elementary considerations of humanity, [are] even more exacting in peace than in war" (Nicaragua v. the United States of America, Merits, I.C.J. Reports 1986, paras. 215 and 218, citing The Corfu Channel Case, Merits, I.C.J. Reports 1949, p. 22).

103. The following fundamental guarantees contained in common article 3 to the Geneva Conventions of 12 August 1949 are also applicable in all situations pertaining in Iraq:

> "1. Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
>
> "To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
>
> (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
>
> (b) Taking of hostages;
>
> (c) Outrages upon personal dignity, in particular humiliating and degrading treatment;
>
> (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples."

F. The humanitarian situation in northern Iraq

104. The humanitarian situation in northern Iraq deteriorated in the past year amid the continuing "double embargo" (i.e. the combination of international economic sanctions against the Republic of Iraq and the severe internal economic blockade imposed by the governmental authorities in Baghdad) and the inter-factional fighting in the self-administered region. This situation was made much worse upon the intervention of Iraqi armed forces causing significant destruction, interrupting the work of international humanitarian agencies and precipitating the departure of international non-governmental humanitarian organizations. It has also been reported that the Iraqi troops who entered the villages upon the first attacks burned and destroyed houses after having looted valuable property. Major buildings, including hospitals and water and sanitation systems, were reportedly looted, damaged and in some cases destroyed. According to the report of September 1996 prepared by the Department for Humanitarian Affairs, referred to above, the recent events in the northern region have created a chaotic situation, especially in Arbil and Suleimaniyah, with more than 500 schools "totally looted" while "a large number" of other schools were "heavily damaged".

105. According to the same September 1996 report produced by the Department for Humanitarian Affairs, the recent outbreak of hostilities in northern Iraq has resulted in the displacement of some 20,000 people within northern Iraq and caused the departure of an estimated 39,000 people for the Islamic Republic of Iran. The armed conflict in Arbil city also resulted in the cutting off of electricity supplies, essential to the running of both water and sewage systems. These systems have been severely damaged. Out of 183 water systems in working order before the conflict, only 27 remain functioning, thereby affecting directly some 440,000 people. A major electricity generating facility (Dokan Dam) had essential electronic cards removed. Consequently, the electricity required to supply water to Suleimaniyah has now to be routed from the Darbandikhan Dam, resulting in frequent power failures. Discontinuation of electricity supply has adversely affected water supply and public health services. Blood banks have been rendered unusable as have been medicines and vaccines which require refrigeration.

106. Upon Iraq's withdrawal of its civil services from northern Iraq and its withholding of the salaries of civil servants and pensioners, the Government of Iraq imposed a severe internal blockade on the import of food, fuel and medicines - a blockade which it steadfastly denied. The inhabitants of the region became particularly dependant upon international humanitarian assistance. As a result of the recent Iraqi military operation, most of the non-governmental organizations working in the region have stopped their activities due to the insecurity of their staff and the uncertainty of the situation. While the Government announced on 12 September 1996 that the internal embargo was lifted (thus admitting that it had imposed and maintained such an embargo over the years) and also announced a broad amnesty to persons in northern Iraq, the staff of non-governmental and intergovernmental humanitarian organizations remain extremely concerned for their security because the amnesty does not apply to persons who were involved in "espionage" - a broad term in Iraq which may be used to cover persons engaged by humanitarian bodies acting in northern Iraq without the permission of the authorities in Baghdad.

V. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

107. Upon consideration of the various aspects of the situation of human rights in Iraq, it remains clear that there has been no improvement in the situation of human rights in the country. It also remains clear that a small number of persons continue to be responsible for the tremendous suffering of the population.

108. With regard to the application of cruel and inhuman punishments, in particular amputations and mutilations, the effect of RCC Decree No. 81 underlines the fact that several other decrees (i.e. RCC Decree Nos. 59, 74, 76, 92, 95, 96, 109, 117 and 125 of 1994) prescribing penalties of amputation for ordinary criminal offences continue to be in force in clear violation of international standards prohibiting such cruel, unusual and inhuman punishments.

109. It is evident that the imposition of military forces composed of tens of thousands of troops and including heavy artillery and tanks in action against civilian targets and resulting in numerous deaths and a large number of arrests and missing persons constitutes a clear violation of Security Council resolution 688 (1991).

110. As concerns the humanitarian situation in Iraq, the Special Rapporteur welcomes the agreement reached in May 1996 to finally implement Security Council resolution 986 (1995) following six years of constant refusal by the Government of Iraq to take advantage of Security Council resolutions 706 (1991), 712 (1991) and 986 (1995). The Special Rapporteur considers the adoption of Security Council resolution 986 (1995) as an important further step on the part of the United Nations to respond to the humanitarian situation in Iraq perpetuated by the Government of Iraq's non-compliance with various other Security Council resolutions. For the benefit of the long-suffering people of Iraq, the long-overdue acceptance by the Government of Iraq of the available resources is to be viewed as a positive step.

111. While the Special Rapporteur acknowledges that the proposed supervised sale of oil constitutes a control mechanism, he observes that such a supervision would function only to guarantee that those in need of the benefits of the sale do indeed receive the benefits. In the absence of such a mechanism, the established record of the Government of Iraq makes it far from certain that any flow of resource benefits will go to those in the greatest need. This is the fundamental reason why the Security Council has required a supervised sale of oil under resolutions 706 (1991), 712 (1991) and also 986 (1995).

112. As a result of the Memorandum of Understanding between the Government of Iraq and the United Nations, the Special Rapporteur notes again that the nationwide distribution of food and medical care will be undertaken by the Government of Iraq based on its system of rationing cards. In view of the previously abusive use of this system by the Iraqi authorities, the Special Rapporteur must express the hope that the implementation of the agreement will be properly assured through international monitoring. He hopes that the United

Nations will vigorously perform this task throughout the country to the benefit of the Iraqi population.

113. At the same time that the Government of Iraq has failed to take steps to enlarge the resources available to it and, therefore, to those in need, the Government has continued with policies of evident discrimination in violation of article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights. Specifically, the geographic disparities between the pace of reconstruction and availability of rations and other basic needs favours the central part of the country and clearly disfavours the south. Not only has the Government chosen to attend to the needs of the central region over all others, but it has at the same time caused the withdrawal of international humanitarian assistance to the southern region which is specifically disfavoured. Beyond this basic geographic disparity also remain the clear preferences granted to specific strata of society in the pay of the Government, e.g. Baath Party elite, the military in general and some divisions in particular.

114. The Special Rapporteur recalls that human rights are indivisible and inalienable. They attach to every person by virtue simply of the fact that they are human beings. They are not granted or allotted by the Government of Iraq, the Revolution Command Council or President Saddam Hussein. Having undertaken to respect within the jurisdiction of the State of Iraq the specific terms of international standards, the Government and its high officers are under an obligation to respect each person's human rights to food and health.

115. The Special Rapporteur notes that the Government of Iraq has cooperated to a significant degree with United Nations humanitarian agencies on a number of questions. But, the Government has also imposed requirements which have not facilitated delivery of assistance swiftly and efficiently to all parts of the country; for example, the United Nations agencies were long ago required to withdraw their offices and international staff from the southern governorates. According to the Memorandum of Understanding signed in relation to implementation of Security Council resolution 986 (1995), United Nations monitors will enjoy full diplomatic immunity protecting them from harassment by Iraqi officials. However, experience has shown that governmental authorities have not always respected such immunities. For example, the Special Rapporteur notes that members of the inspection teams of the Special Commission monitoring the disarmament of Iraq pursuant to Security Council resolution 661 (1990) were denied, on several occasions, access by the Iraqi authorities to sites in Iraq designated for inspection, although an agreement exists between the Government of Iraq and the United Nations to allow them unrestricted access to any and all areas, facilities, equipment, records and means of transportation which they wish to inspect. United Nations humanitarian personnel have been similarly obstructed and harassed in the past. The Special Rapporteur hopes that this will not be the case in the implementation of the Memorandum of Understanding and that ordinary Iraqis will not continue to suffer because of the obstructionism of the Government. To this end, the Special Rapporteur also hopes that conditions in Iraq will soon meet the minimum security concerns of the Secretary-General in order to allow implementation of the Memorandum of Understanding without further delay.

B. Recommendations

116. In view of the general conclusion that the overall situation of human rights in Iraq has not improved, the Special Rapporteur refers to all of his previous recommendations, which remain valid.

117. In addition, and in particular, the Special Rapporteur recommends the following:

(a) That the Government of Iraq abrogate all laws and decrees which prescribe cruel, inhuman or degrading treatment or punishment;

(b) That the Government of Iraq refrain from actions which contribute to insecurity affecting the population, such as the use of military forces against civilian targets, and which prevent implementation of the "food for oil" formula under independent United Nations supervision.